

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ROBERT L. RICH**

Claimant

VS.

**BEECH AIRCRAFT CORPORATION**

Respondent

AND

**RAYTHEON AIRCRAFT COMPANY**

Insurance Carrier

Docket No. 187,685

**ORDER**

Claimant appeals from a March 15, 1999 preliminary hearing Order entered by Administrative Law Judge John D. Clark which granted respondent's request for an offset pursuant to K.S.A. 44-501(h) against claimant's temporary total disability benefits.

**ISSUES**

The Administrative Law Judge found that K.S.A. 44-501(h) does not distinguish between temporary total and permanent partial disability, but refers to "any compensation benefit payments." Claimant does not dispute that finding. Instead, claimant, who is 58 years old, asserts that the retirement offset does not apply because his benefits are based upon the existence of a medical disability, not age or years of service.<sup>1</sup> Whether K.S.A. 44-501(h) requires an offset for claimant's disability/retirement benefits is the only issue raised for Appeals Board review.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Before reaching the merits of claimant's argument on appeal, the Appeals Board must first decide whether it has jurisdiction of this issue on an appeal from a preliminary hearing order.

There is no dispute concerning the compensability of claimant's injury. In its brief, respondent only argues the issue of its entitlement to an offset; specifically, whether or not claimant's benefits are retirement benefits or disability benefits.

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<sup>1</sup> In support of this contention, claimant cites the Appeals Board's decision in Green v. City of Wichita, Docket No. 190,467 (August 1997), affirmed by Kansas Court of Appeals, Docket No. 79,848 (3/26/99); petition for review by Kansas Supreme Court filed 4/30/99.

K.S.A. 1998 Supp. 44-551(b)(2)(A) limits the jurisdiction of the Appeals Board to review preliminary hearing orders only in cases where the Administrative Law Judge exceeded his or her jurisdiction. This jurisdiction includes the specific issues identified in K.S.A. 1998 Supp. 44-534a. Whether the Administrative Law Judge erred in his finding that the evidence shows respondent is entitled to an offset pursuant to K.S.A. 44-501(h), did not exceed the Administrative Law Judge's jurisdiction and is not an argument the Appeals Board has the jurisdiction to consider on an appeal from an order entered pursuant to K.S.A. 1998 Supp. 44-534a.

The arguments pertain to whether claimant is receiving benefits due to his age, years of service or, instead, due to his disability for the purpose of determining the applicability of the offset statute. This is a determination the Administrative Law Judge has the jurisdiction and authority to make at a preliminary hearing. It does not give rise to a disputed issue of whether claimant suffered an accidental injury, whether claimant's injury arose out of and in the course of claimant's employment with respondent, whether notice was given or claim timely made, or whether certain defenses apply. The Appeals Board has previously held that the certain types of defenses contemplated by K.S.A. 44-534a(a)(2), are defenses which go to the compensability of the claim. See Cockerham v. Nichols Fluid Service, Docket No. 201,867 (February 1996). As indicated above, the issues raised by this appeal do not fall within that category.

The Appeals Board finds the Administrative Law Judge did not exceed his jurisdiction in granting the relief requested at the preliminary hearing. Accordingly, the Board does not have jurisdiction of this appeal from a preliminary hearing order because claimant's arguments fail to raise a jurisdictional issue.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that it does not have jurisdiction to review at this juncture of the proceedings the preliminary hearing Order entered by Administrative Law Judge John D. Clark, dated March 15, 1999, and that this appeal should be, and the same is hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1999.

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BOARD MEMBER

c: David H. Farris, Wichita, KS  
Davis S. Wooding, Wichita, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director